

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RIVERCARD, LLC,

2:12-CV-1150 JCM (CWH)

Plaintiff(s),

V.

POST OAK PRODUCTIONS, INC., et al.,

Defendant(s).

ORDER

16 Presently before the court is defendant Brandon Rosen's motion for judgment on the
17 pleadings. (Doc. # 44). Plaintiff Rivercard, LLC filed an opposition (doc. # 48), and defendant Rosen
18 replied (doc. # 49).

19 || I. Background

20 The allegations in the complaint revolve around plaintiff's purchase of stock in defendant
21 Post Oak Productions, Inc ("Post Oak"). Plaintiff claims that it entered into an investment agreement
22 with Post Oak in April 2010 for the purposes of, among other things, marketing and advertising a
23 website for the "World Series of Poker Academy." Defendant Rosen was neither a party nor a
24 signatory to the investment agreement between plaintiff and Post Oak. Plaintiff specifically alleges
25 that defendant Rosen agreed to "side deals" with World Series of Poker players, and improperly
26 received funds paid to Post Oak in the investment agreement.

27 | ...

1 Plaintiff initially put forward fourteen separate claims against defendant Rosen, including:
 2 (1) breach of contract; (2) tortious breach of the covenant of good faith and fair dealing; (3) breach
 3 of fiduciary duty; (4) fraud/intentional misrepresentation; (5) failure to disclose material facts; (6)
 4 federal RICO violations/wire fraud; (7) federal RICO violations/mail fraud; (8) Nevada RICO
 5 violations; (9) violations of federal securities laws; (10) violations of Nevada securities laws; (11)
 6 unjust enrichment; (12) civil conspiracy/concert of action; (13) “punitive damages”; and (14) alter
 7 ego.

8 Defendant now requests that the court grant judgment in his favor on all claims against him
 9 pursuant to Federal Rule of Civil Procedure 12(c). In response, plaintiff raises arguments relating
 10 only to its claims of breach of contract and unjust enrichment.

11 **II. Legal standard**

12 Motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) are “functionally
 13 identical” to motions for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Dworkin v. Hustler
 14 Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The primary difference between the two is that
 15 a “Rule 12(c) motion, unlike a Rule 12(b)(6) motion, implicates the pleadings as a whole, and not
 16 merely the complaint.” *Amerson v. County of Clark*, 2011 WL 4433751, *1-2 (D. Nev. September
 17 21, 2011) (*citing Aponte-Torres v. Univ. of Puerto Rico*, 445 F.3d 50, 54-55 (1st Cir. 2006)).

18 In reviewing a motion for judgment on the pleadings pursuant to Rule 12(c), the court “must
 19 accept all factual allegations in the complaint as true and construe them in the light most favorable
 20 to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Judgment on the
 21 pleadings is appropriate when, taking everything in the pleadings as true, the moving party is entitled
 22 to judgment as a matter of law. *Ventress v. Japan Airlines*, 486 F.3d 1111, 1114 (9th Cir. 2007);
 23 *Honey v. Distelrath*, 195 F.3d 531, 532 (9th Cir. 1999). The allegations of the nonmoving party must
 24 be accepted as true while any allegations made by the moving party that have been denied or
 25 contradicted are assumed to be false. *MacDonald v. Grace Church Seattle*, 457 F.3d 1079, 1081 (9th
 26 Cir. 2006).

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1 **III. Discussion**

2 Defendant Rosen requests that the court award judgment in his favor on all the claims
 3 asserted against him in this case. The court will discuss Rosen's arguments as to (1) the unjust
 4 enrichment claim, (2) the breach of contract claim, and (3) all of the other claims in turn.

5 (1) Unjust enrichment

6 Under Nevada law, unjust enrichment is an equitable doctrine that allows recovery of
 7 damages "whenever a person has and retains a benefit which in equity and good conscience belongs
 8 to another." *Unionamerica Mortgage & Equity Trust v. McDonald*, 626 P.2d 1272, 1273 (Nev.
 9 1981); *see also Asphalt Products v. All Star Ready Mix*, 898 P.2d 699, 701 (Nev. 1995).

10 In this case, Rosen argues that plaintiff does not assert a claim for which relief can be granted
 11 under the doctrine of unjust enrichment because plaintiff does not allege that Rosen received any
 12 benefit directly from plaintiff. However, direct conferral of a benefit upon a defendant is not
 13 necessary under the doctrine of unjust enrichment.¹

14 In its complaint, plaintiff alleges that it conferred a benefit upon Post Oak of approximately
 15 one million dollars, and that instead of performing as promised under the contract, Post Oak
 16 "improperly paid monies to defendants Rosen and Goldenberg to the detriment of plaintiff and other
 17 shareholders." (Doc. # 1 p. 8:14-18). Plaintiff allegedly agreed to the investment deal with Post Oak
 18 in reliance on misrepresentations made by Rosen regarding an exclusive agreement between Post
 19 Oak and Harrah's Entertainment. (*Id.* p. 7:9-11). The combination of these allegations, taken as true,
 20 is sufficient as a matter of law to conclude that Rosen has retained a benefit which in equity and
 21 good conscience belongs to plaintiff. Therefore plaintiff has sufficiently alleged a claim for unjust
 22 enrichment, and Rosen's motion will be denied as to this claim.

23 (2) Breach of contract

24 Under Nevada law, a claim against a defendant for breach of contract requires that a

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 26 ¹ Rosen does argue that a direct conferral of a benefit by a plaintiff to a defendant is necessary for an unjust
 27 enrichment claim, however the passage he cites to specifically discusses the requirements of a *quasi-contract*.
Unionamerica, 626 P.2d at 1273. Later in the same opinion, the Nevada Supreme Court defined unjust enrichment as
 28 a much broader doctrine. *Id.*

1 defendant be a party to the contract. *See Clark Cnty. v. Bonanza No. 1*, 615 P.2d 939, 943 (Nev.
 2 1980). Here, plaintiff does not allege that Rosen was a party or even a signatory to the contract at
 3 issue, and therefore it has not sufficiently stated a claim for breach of contract. As such, Rosen's
 4 motion will be granted as to plaintiff's breach of contract claim.

5 (3) All other claims against Rosen

6 In its response to the instant motion, plaintiff fails to raise any arguments that have not
 7 already been decided upon by the court as to why Rosen is not entitled to judgment pursuant to rule
 8 12(c) on the remaining twelve claims.²

9 For this reason, the court will grant Rosen's motion as it relates to the following claims:
 10 (claim three) tortious breach of the covenant of good faith and fair dealing; (claim four) breach of
 11 fiduciary duty; (claim five) fraud/intentional misrepresentation; (claim six) failure to disclose
 12 material facts; (claim seven) federal RICO violations/wire fraud; (claim eight) federal RICO
 13 violations/mail fraud; (claim nine) Nevada RICO violations; (claim ten) violations of federal
 14 securities laws; (claim eleven) violations of Nevada securities laws; (claim thirteen) civil
 15 conspiracy/concert of action; (claim fourteen) "punitive damages"; and (claim fifteen) alter ego.

16 **IV. Conclusion**

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Brandon
 19 Rosen's motion for judgment on the pleadings (doc # 44) is GRANTED IN PART.

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26 ² Though plaintiff does make a request to "reiterate and rely upon the arguments it set forth in its response to
 27 defendant Patriquin's motion to dismiss," it does not state how these claims fare any better against Rosen than they did
 28 against Patriquin. For the same reasons that the court was not persuaded plaintiff's arguments when it granted the prior
 motion, the court does not find them persuasive here. (See doc. # 41).

1 IT IS FURTHER ORDERED that defendant Brandon Rosen is entitled to judgment in his
2 favor as to plaintiff's first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth,
3 fourteenth, and fifteenth claims.

4 DATED December 26, 2013.

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UNITED STATES DISTRICT JUDGE
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